

REFERENCE TITLE: agency inspection report; deficiency correction

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1251

Introduced by
Senator Flake: Representative Konopnicki

AN ACT

AMENDING SECTION 41-1009, ARIZONA REVISED STATUTES; RELATING TO ADMINISTRATIVE PROCEDURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1009, Arizona Revised Statutes, is amended to
3 read:

4 **41-1009. Inspections; applicability**

5 A. An agency inspector or regulator who enters any premises of a
6 regulated person for the purpose of conducting an inspection shall:

7 1. Present photo identification on entry of the premises.

8 2. On initiation of the inspection, state the purpose of the
9 inspection and the legal authority for conducting the inspection.

10 3. Disclose any applicable inspection fees.

11 4. Afford an opportunity to have an authorized on-site representative
12 of the regulated person accompany the agency inspector or regulator on the
13 premises, except during confidential interviews.

14 5. Provide notice of the right to have:

15 (a) Copies of any original documents taken by the agency during the
16 inspection if the agency is permitted by law to take original documents.

17 (b) A split of any samples taken during the inspection if the split of
18 any samples would not prohibit an analysis from being conducted or render an
19 analysis inconclusive.

20 (c) Copies of any analysis performed on samples taken during the
21 inspection.

22 6. Inform each person whose conversation with the agency inspector or
23 regulator during the inspection is tape recorded that the conversation is
24 being tape recorded.

25 7. Inform each person interviewed during the inspection that
26 statements made by the person may be included in the inspection report.

27 B. On initiation of an inspection of any premises of a regulated
28 person, an agency inspector or regulator shall provide the following in
29 writing:

30 1. The rights described in subsection A of this section.

31 2. The name and telephone number of a contact person available to
32 answer questions regarding the inspection.

33 3. The due process rights relating to an appeal of a final decision of
34 an agency based on the results of the inspection, including the name and
35 telephone number of a person to contact within the agency and any appropriate
36 state government ombudsman.

37 C. An agency inspector or regulator shall obtain the signature of the
38 regulated person or on-site representative of the regulated person on the
39 writing prescribed in subsection B of this section indicating that the
40 regulated person or on-site representative of the regulated person has read
41 the writing prescribed in subsection B of this section and is notified of the
42 regulated person's or on-site representative of the regulated person's
43 inspection and due process rights. The agency shall maintain a copy of this
44 signature with the inspection report and shall leave a copy with the
45 regulated person or on-site representative of the regulated person. If a

1 regulated person or on-site representative of the regulated person is not at
2 the site or refuses to sign the writing prescribed in subsection B of this
3 section, the agency inspector or regulator shall note that fact on the
4 writing prescribed in subsection B of this section.

5 D. An agency that conducts an inspection shall give a copy of the
6 inspection report to the regulated person or on-site representative of the
7 regulated person either:

- 8 1. At the time of the inspection.
- 9 2. Notwithstanding any other state law, within thirty working days
10 after the inspection.

- 11 3. As otherwise required by federal law.

12 E. The inspection report shall contain deficiencies identified during
13 an inspection. Unless otherwise provided by law, the agency ~~may~~ SHALL
14 provide the regulated person an opportunity to correct the deficiencies
15 unless the agency determines that the deficiencies are:

- 16 1. Committed intentionally.
- 17 2. Not correctable within a reasonable period of time as determined by
18 the agency.

- 19 3. Evidence of a pattern of noncompliance.

20 4. A SIGNIFICANT risk to any person, the public health, safety or
21 welfare or the environment.

22 F. If the agency allows the regulated person an opportunity to correct
23 the deficiencies pursuant to subsection E of this section, the regulated
24 person shall notify the agency when the deficiencies have been corrected.
25 Within thirty days of receipt of notification from the regulated person that
26 the deficiencies have been corrected, the agency shall determine if the
27 regulated person is in substantial compliance and notify the regulated person
28 whether or not the regulated person is in substantial compliance. If the
29 regulated person fails to correct the deficiencies or the agency determines
30 the deficiencies have not been corrected within a reasonable period of time,
31 the agency may take any enforcement action authorized by law for the
32 deficiencies.

33 G. An agency decision pursuant to subsection E or F of this section is
34 not an appealable agency action.

35 H. At least once every month after the commencement of the inspection
36 an agency shall provide a regulated person with an update on the status of
37 any agency action resulting from an inspection of the regulated person. An
38 agency is not required to provide an update after the regulated person is
39 notified that no agency action will result from the agency inspection or
40 after the completion of agency action resulting from the agency inspection.

41 I. This section does not authorize an inspection or any other act that
42 is not otherwise authorized by law.

1 J. This section applies only to inspections necessary for the issuance
2 of a license or to determine compliance with licensure requirements. This
3 section does not apply:

4 1. To criminal investigations, investigations under tribal state
5 gaming compacts and undercover investigations that are generally or
6 specifically authorized by law.

7 2. If the inspector or regulator has reasonable suspicion to believe
8 that the regulated person may be engaged in criminal activity.

9 3. To the Arizona peace officer standards and training board
10 established by section 41-1821.

11 K. If an inspector or regulator gathers evidence in violation of this
12 section, the violation shall not be a basis to exclude the evidence in a
13 civil or administrative proceeding, if the penalty sought is the denial,
14 suspension or revocation of the regulated person's license or a civil penalty
15 of more than one thousand dollars.

16 L. Failure of an agency, board or commission employee to comply with
17 this section:

18 1. Constitutes cause for disciplinary action or dismissal in
19 accordance with section 41-770.

20 2. Shall be considered by the judge and administrative law judge as
21 grounds for reduction of any fine or penalty.

22 M. An agency may make rules to implement subsection A, paragraph 5 of
23 this section.

24 N. ~~Nothing in~~ This section shall NOT be used to exclude evidence in a
25 criminal proceeding.